

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

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DISPATCHED BY
MM Doc No. 93-210

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Webster Springs, West Virginia)

RM-8283

NOTICE OF PROPOSED RULE MAKING

Adopted: July 1, 1993;

Released: July 22, 1993

Comment Date: September 17, 1993

Reply Comment Date: October 4, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Cat Radio, Inc. ("petitioner"), proposing the substitution of Channel 262B for Channel 262A at Webster Springs, and the modification of its construction permit (File No. BPH-920507MB) to specify operation on the higher powered channel.¹ Petitioner states its intention to apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 262B for Channel 262A at Webster Springs, since it would provide the community with a wide coverage area FM transmission service. An engineering analysis has determined that Channel 262B can be allotted to Webster Springs in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site.² We shall also propose to modify petitioner's construction permit to specify operation on Channel 262B. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 262B at Webster Springs or require the petitioner to demonstrate the availability of an additional equivalent class channel for use.

3. Since the proposal is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank West Virginia, petitioner will be required to conform with the notification requirements of Section 73.1030(a) of the Commission's Rules.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Present	Proposed
Webster Springs, West Virginia	262A	262B

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before September 17, 1993, and reply comments on or before October 4, 1993, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Timothy E. Welch, Esq.
Dean George Hill & Welch
Suite 113
1330 New Hampshire Ave., N.W.
Washington, D.C. 20036
(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be

¹ On December 15, 1992, petitioner prematurely filed a petition for rule making for a Class B upgrade indicating that it was the sole applicant for Channel 262A at Webster Springs, and that after its application was granted, additional information would be filed in support of the upgrade. On June 24, 1993, petitioner filed a supplement transmitting a copy of a letter from the FM

Branch granting petitioner's application for Channel 262A. The application was granted on June 11, 1993 and a construction permit was issued on June 24, 1993.

² The coordinates for Channel 262B at Webster Springs are North Latitude 38-28-42 and West Longitude 80-24-54.

served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested par-

ties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.